

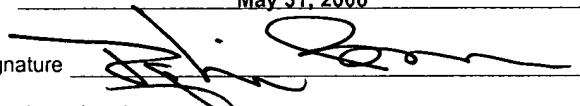



Doc Code: AP.PRE.REQ

PTO/SB/33 (07/05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR</p> <p>on <u>May 31, 2006</u></p> <p>Signature <u></u></p> <p>Typed or printed name <u>Jacqueline Beavers</u></p>		Application Number	Filed
		10/725,786	December 1 2003
		First Named Inventor	
		Hamer	
		Art Unit	Examiner
		3752	HWU
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>31404</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>		<p><u></u> Signature</p> <p><u>J. Herbert O'Toole, Ph.D</u> Typed or printed name</p> <p><u>864 370-2211</u> Telephone number</p> <p><u>May 31, 2006</u> Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Douglas T. Hamer)	Docket No.:	33185-001
Serial No.:	10/725,786)	Examiner:	David S. Hwu
Filing Date:	12/01/2003)	Group Art No.:	3752
Entitled:	Novelty Beverage Straw)	Confirmation No.:	3820
)	Customer No.:	000046591

REQUEST FOR REVIEW REASONED STATEMENT

Commissioner for Patents
Fee Response
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the rejection mailed March 17, 2006.

Applicant's claim 1 reads as follows:

A semi-rigid straw

open from end to end

substantially filled with a flavored material selected fro the group
consisting of jellied drinks, granitas, slushes and precursors thereof,

said straw having tightly fitting end caps and

a minimum I.D of at least 0.75 in. and

a minimum wall thickness of 0.02 mm.

The configuration is seen in Fig. 1. The dimensions are taken from paragraph [0019].

Claim 1 and claims 2-10 and 16 depending thereupon have been rejected over a
combination of Benefiel et al (USP# 4,981,468) in view of Thorball et al. (USP# 6,283,294) and Wong et
al. (USP# 6,333,050).

Benefiel is cited for a semi-rigid straw containing material and having end caps. Benefiel
retains the filling material using a grid 18 (Fig. 2,3) attached to an immobilized sleeve 26 or a basked 118
(Fig. 4) and is not "open from end to end."

Thorball et al. is used to teach a straw having an "inside diameter of at least 20mm."

Applicant has disputed the Examiner's interpretation of Thorball at page 4 of the response filed February

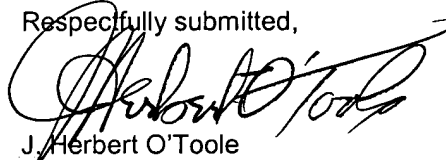
20, 2006. In fact the specification does not use the term diameter (much less ID or OD) but "width" (col 3, line 13). Thorball teaches a tube within a tube and is not a single tube "open from end to end" and must be kept in a sealed bag prior to use. Furthermore, a tube within a tube would not have an ID of 0.75 inc. if its total width were 20mm. The large bore is required so that the tube maybe used in a game described in the specification.

Claim 17 has been rejected under 35 USC 102(b) as anticipated by Benefiel et al. As noted in the dimension of claim 1, Benefiel teaches a grid across the tube to support a solid medicament and is not open either before or after use.

The references teach drug delivery systems which support (Benefiel) or attach (Thorball) particulate medicaments using grids, nets or tubular inserts. Applicant freezes a slush or a shooter in the tube and when used, the tube is ready for reuse in a matter of minutes by the addition of more slush. The Examiner appears to have ignored the significance of claim language addressing the openness- lack of restriction- in the tube.

Careful consideration and prompt allowance is respectfully solicited.

Respectfully submitted,



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I hereby CERTIFY that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22131-1450.

Date:

May 31 2006

by:


Jacqueline Beavers